

IN THE MATTER OF
COMET TRAILER CORPORATION,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

PCRB Nos. '85-151'
and 85-189

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

Appellant Comet Trailer Corporation was represented by Walter Dauber, Attorney at Law. Respondent Department of Ecology represented by Terese Neu Richmond, Assistant Attorney General. proceedings were reported by Cheri L. Davidson of Gene Barker Associates and Ed Howard of Jackie Adkins and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. Post hearing briefs were submitted, the last being received on July 1, 1986. We have excluded from our consideration facts and materials set forth by brief which are not a part of the administrative evidentiary record. Otherwise, from the testimony, evidence and contentions of the parties the Board makes these

FINDINGS OF FACT

I

Appellant Comet Trailer Corporation operates a recently-erected manufacturing facility in Selah, Washington, comprised of a huge metal building enclosing about four acres under roof and an additional area of surrounding blacktop covering perhaps another four acres.

Comet is engaged in the fabrication and assembly of large trailer units designed for the highway transport of commercial goods and wastes. Their products are made-to-order for a wide variety of hauling tasks, and include conventional vans, refrigeration units and flatbeds. The trailers are painted on-site before delivery. The company uses solvents for degreasing and paint thinning.

II

The Department of Ecology is a state agency with the responsibility for implementing and enforcing the dangerous waste laws of the state.

III

On July 30, 1985, Ecology issued a regulatory order to Comet (Order No. DE 85-550) asserting the following:

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On April 8, 1985, Comet Trailer Corporation shipped dangerous waste generated by Comet Trailer Corporation to the Terrace Heights Landfill in Yakima, Washington. As a generator of dangerous waste, Comet Trailer has violated the following requirements:

1. WAC 173-303-060 - failure to notify the Department of Ecology of dangerous waste generation;
2. WAC 173-303-070 - failure to designate dangerous wastes;
3. WAC 173-303-141 - disposal of dangerous waste in a facility other than a permitted TSD facility;
4. WAC 173-303-180 - failure to use the dangerous waste manifest system.

The order went on to require Comet to take appropriate action in accordance with the following instructions:

1. Immediately cease and desist from any further removal from the facility of all the following wastes until a dangerous waste identification number has been obtained:
 - a. Waste paint.
 - b. Waste solvents including, but not limited to xylene, methylene chloride, and acetone.
 - c. Waste solvent degreaser solution.
 - d. Any other waste which may be designated as dangerous or extremely hazardous waste per WAC 173-303.
2. Within thirty (30) days of receipt of this Order provide the following to the Department of Ecology, Central Regional Office:
 - a. A schedule of compliance to meet requirements of WAC 173-303 applicable to generators of dangerous and/or extremely hazardous waste.
 - b. Provide a detailed report of the location, chemical name, and current rates of generation of all of the wastes listed in Item 1, above.
 - c. Notify the Department of dangerous waste generation activity by submitting a completed and signed Notification of Dangerous Waste Activities (Form 2).
 - d. Provide a complete and detailed report describing the contents and disposition of any

and all barrels containing waste materials which were or are stored at the Comet Trailer Corporation facility at Selah, Washington, from November, 1983 (sic) till the date of receipt of this Order.

IV

In July 30, 1985, Ecology also issued Comet a notice of c penalty (No. DE 85-551) assessing a fine of \$10,000. The nc recited the following:

On April 8, 1985, Comet Trailer Corporation snipped dangerous wastes generated by Comet Trailer Corporation to the Terrace Heights Landfill in Yakima, Washington. As a generator of dangerous wastes, specifically waste xylene and lead-contaminated paint waste, Comet Trailer Corporation has violated the following requirements:

1. WAC 173-303-060 - failure to notify the Department of Ecology of dangerous waste generation;
2. WAC 173-303-070 - failure to designate dangerous wastes;
3. WAC 173-303-141 - disposal of dangerous waste in a facility other than a permitted TSD facility;
4. WAC 173-303-180 - failure to use the dangerous waste manifest system.

V

On August 9, 1985, Comet mailed its Notice of Appeal to this B regarding the regulatory order (PCHB No. 85-151) and at the same applied to Ecology for relief from the penalty.

Ecology affirmed the penalty by notice to Comet issued September 6, 1985. Comet appealed the penalty to this Board on September 1985 (PCHB No. 85-189).

VI

The incident of April 8, 1985, involved the dumping of ten d of waste material from Comet at the Terrace Heights Landfill. No :

contests that this occurred. Two drums were filled with dry paint products, three were empty and five were filled with sawdust. Of five sawdust-filled drums, three were saturated with a liquid smell-like solvent. A single drum of paint waste weighs over 400 pounds.

Upon delivery to the landfill, these drums were segregated from other waste at the site and an Ecology inspector was called to investigate immediately. The inspector took samples of the dry paint waste and the saturated sawdust.

Analysis of the paint waste sample taken on April 8 showed lead at a concentration of 35.6 mg/l. The solvent-soaked sawdust was found to contain xylene, a listed dangerous waste. The soaked sawdust also was shown to be ignitable at less than 100 degrees Fahrenheit.

VII

No one suggests that a manifest was prepared describing the April 8, 1985, shipment from Comet to the landfill. The Terrace Hill Landfill is not an approved TSD (transfer, treatment, storage, disposal) facility.

VIII

The incident of April 8, 1985, followed extensive contact between Ecology and Comet which led the agency to believe there was a real serious problem of waste handling then simply one isolated incident involving five drums containing contaminated material.

IX

In the fall of 1984, Comet moved its entire operation from Spokane, Washington to its present site in Selah. The inventory

hand in Spokane was hauled in trailers over the approximately 100 hundred miles to the new locale.

One two-trailer shipment consisted of 120-160 fifty-five gallon drums, some full, some partially-filled, some empty. The full and partially-filled barrels contained, variously: waste paint, solvents; unused motor oil, antifreeze, paint, solvents, hydraulic and foam; nuts, bolts and other hardware. The packing process was hurried and haphazard, no attempt being made to sort out the waste materials, nor to accurately label the barrels.

Some were loaded without bungs in place. By the time they reached Selah, the inside of the trailers showed signs of spills or leakage from the drums. The drums were eventually off-loaded onto the blacktop outside the new Comet building. They were not inventoried at arrival or when off-loaded.

X

Before the move from Spokane, a Comet employee suspecting possible dangerous waste generation by the company, made some preliminary inquiries about the proper handling and disposal of such material. Comet's president was made aware of the prohibition against disposal of dangerous wastes at an unapproved facility, but, at that time, declined to run tests to determine the character of the wastes or to pursue the issue of what to do with them if they were dangerous. He was then under the impression that only the dry scrapings from products used by the company might qualify as dangerous wastes.

XI

On January 25, 1985, two Ecology inspectors visited the Comet site and observed about 150 fifty-five gallon drums outdoors on the blacktop. One was labeled "waste meth," seven were labeled "sper actusol," the rest were unlabeled. The inspectors tipped 20-30 drums and concluded that, of these, one-third were empty and the rest were full or partially-filled. They did not determine what was in the barrels. None appeared to be leaking.

Comet's president accompanied the inspectors. He stated that the drums were from Spokane, but that he didn't know exactly what was in all of them. He did, however, describe the chemicals used in the company's operations. The inspectors advised him that wastes from lead-based paints and certain solvents would likely be classified as dangerous wastes. The need to designate Comet's wastes was emphasized.

The president stated that a small shipment of paint waste had already been sent to the approved TSD facility at Arlington, Oregon. The inspectors came away with the strong suspicion that some of the barrels they observed contained dangerous waste.

XII

On March 8, 1985, one of the inspectors wrote to Comet setting forth his findings and requesting more information. He listed the following as chemical products used by Comet: acetone, methylene chloride, xylene, solvent degreaser (actusol), paint waste. He also reported that the operators of the Arlington, Oregon, disposal facility had no record of any shipment of wastes from Comet.

The inspector requested submission by April 19, 1985, of various items, including monthly and annual rates of waste generation from the chemicals products, records and details on waste paint disposal, and an inventory of the contents and length of storage of the drums in the storage area. This latter request, clearly, was an attempt to find out what was in the barrels the inspectors had observed in January.

The letter then stated:

It appears certain that you have what will be considered dangerous waste (DW) on site. If your waste is regulated you will be required to ship it off-site within ninety (90) days to remain in compliance.

The letter also instructed of the need for a dangerous waste identification number and for filing the notification form necessary to apply for such a number. It closed with detailed instructions for shipping materials to Arlington. These instructions referenced the proper packing and manifesting of the waste shipment.

XIII

On March 22, 1985, an Ecology employee observed a trailer loaded with about 130 barrels parked on the blacktop near Comet's building. He reported this to his office and an inspector subsequently called Comet and asked that the drums not be moved off-site. The company made no promises, and on March 28, 1985, the same employee passing the site, observed that the trailer and drums had been removed from the place he'd first seen them. He did not conduct an inspection of the building or grounds.

XIV

On March 27, 1985, Comet's president and an Ecology inspector talked by phone. The inspector wanted to set up another inspection and was advised that April 1 would be a convenient date. Comet's president wanted to inquire about the requirements of the March letter, particularly about the disposal of dry paint scrapings. He insisted on speaking to the inspector's supervisor. The supervisor advised him that the paint scrapings could be land-filled if they were not dangerous wastes. There followed a discussion of procedures for figuring out whether they were dangerous or not.

XV

The April 1, 1985, reinspection occurred as scheduled. The same two Ecology inspectors and their supervisor were on hand. The inspection team counted 75 drums stored outside the Comet production building. Sixty-two were on the asphalt and 13 were on a near trailer.

The inspectors looked in some, but not all, of the barrels. Again there was a mix of empty, full and partially-filled drums. Two samples were taken: one from a barrel of unused solvent, another from a drum of paint scrapings.

Analysis of these samples tentatively identified the solvent as xylene, ignitable at less than 100 degrees Fahrenheit, and showed the paint scrapings to contain lead in a concentration comparable to that later dumped at the Terrace Heights Landfill.

On the April 1 reinspection, the Ecology personnel had a lengthy

discussion of the dangerous waste regulations with Comet's president. A copy to the regulations was hand-delivered to him on that occasion. He was asked for, but could not locate, material safety data sheets for the paint being used, in order to determine if any of it contained heavy metals. Ecology's inspectors reiterated the need to designate the company's wastes and emphasized that if the dry paint was contained lead it could not be locally landfilled.

(A material safety data sheet later obtained by Comet and forwarded to Ecology shows that some paint used by the company contained 7% lead chromate.)

XVI

The Terrace Heights Landfill was alerted some time in late March to contact Ecology if any loads arrived from Comet. When the April delivery was made, the agency was contacted and an inspector appeared on the scene shortly thereafter to take samples.

When analysis confirmed the nature of the wastes involved, the County, which operates the facility, notified Comet to cease all future disposal of such material at the landfill.

The landfill keeps accounts in the ordinary course of business which identify when checks have been issued to pay for various deliveries of wastes by commercial entities. These records do not disclose any checks for the account covering Comet's wastes issued between Ecology's January 25 inspection and the April 8 event.

XVII

The dangerous wastes dumped at the landfill on April 8 were mixed.

in with a load of pallets and other debris and some of the drums were crushed and shattered. Ecology decided that no public health threat existed from leaving the drums there and, thus, did not require their removal.

XVIII

On April 18, 1985, Comet's president, by letter, replied to Ecology's inspection report of March 8. As to "monthly waste generation" the letter listed the following:

- a. Acetone: Not used, no waste.
- b. Methylene Chloride: All waste is on rags or foam.
- c. Xylene: All waste is on rags or evaporated.
- d. Solvent degreaser is I.P.I.-25 and/or Du-Jet and is used with water. . .
- e. Paint waste could reach two barrels per month of dry as per your inspection.

The letter acknowledged that no records of any shipment to Arlington could be found and stated: "It appears all dry paint has always been locally land filled."

XIX

As to the request for an inventory of the contents of the drums stored at Comet and the length of storage, Comet's April 18 letter stated only: "No full drums storage appears to be required. All paint waste is removed within one week."

Thus, Ecology's attempt to find out what was in the barrels that were first observed in January was frustrated.

XX

On June 14, 1985, Ecology wrote to Comet advising of the outcome.

of the analysis of the April 1 sample. The letter stated that Comet's paint wastes contained lead and exceeded toxicity limits and that waste solvents in any form (liquid or absorbed by foam or rags) would have to be handled as dangerous waste.

The letter forbade moving any waste paint or waste solvents off site, regardless of concentration, until a dangerous waste ID number was obtained. Forms for applying for a number were enclosed as well as another copy of the dangerous waste regulations. The letter advised that a regulatory order to the same effect would follow.

XXI

Ecology's belief is that some wastes from the drums brought to Selah from Spokane are unaccounted for and that these wastes were disposed of improperly.

Comet's position is that very little of the material brought from Spokane was waste of any kind and that the unused material in the non-empty drums was simply worked into the operation at Selah with the drums thereafter being sold.

Comet's president conceded that some dry paint wastes may have been taken to Terrace Heights in addition to the delivery of April 1. But, he strenuously denied that any wastes have ever been disposed of off site at any other location. We were persuaded by his denial to find that no such dumping occurred.

XXII

Comet's evidence was that the product-filled drums it acquires are gradually emptied in the course of work and, then, in the v.

majority of cases, either sold as empties or given to employees to take home.

The company introduced receipts showing the sale of some 245 empty drums in 1985, 38 of which were identified as having last contained xylene. There was no evidence of when any of these barrels were obtained or of what happened to any wastes generated from their contents.

XXIII

Formerly, xylene was used at Comet in connection with washing trailers. Comet's president theorized that the sawdust-saturated xylene must have resulted from a spill during washing which employee soaked up with sawdust and disposed of in barrels. Generally, he said, wastes of xylene and other solvents used by the company existed only on rags used for applying the solvents and the liquid simply evaporates off the rags. Such rags, he admitted, could have, on occasion, been disposed of at the landfill.

XXIV

Comet's president explained the dumping of waste paint at the landfill on April 8 by stating his conviction the Ecology supervisor to whom he spoke by phone on March 27 had authorized it.

We find, as shown above in Finding XIV, that this is not the case. Moreover, we are convinced that, after his numerous contacts with Ecology, his persistence in believing he could landfill all his dry paint reflects a willful disregard of facts he should have known prior to April 8.

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XXV

Since the incident of April 8, 1985, Comet has filed a certification of Hazardous Waste Activities with the United States Environmental Protection Agency and received a dangerous waste identification number.

The company has also taken several steps to avoid the further generation of dangerous wastes. Trailers are now washed with soap not xylene. Lead-based paint is no longer used. Distilling equipment has been purchased and is in use for the recycling of used solvents.

These actions were designed to remove the company from regulation and spare it the pain and expense of complying with the complex dangerous waste storage, transfer and disposal requirements.

The company still has not gone through the designation process for the paint, solvent, and other products it now uses in order to resolve definitively the question of whether its present wastes should be regulated as dangerous wastes. The still bottoms from the solvent recycling process are being sent to the landfill on the assumption that the volume is under regulatory minimums. Whether this is so, in fact, has not been determined on the basis of any hard data.

There have, however, been no further documented incidents similar to the April 8, 1985 event.

XXVI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

DOCS Nos. 85-151 and 85-189

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matter Chapters 43.21B and 70.105 RCW.

II

Chapter 70.105 RCW empowers the Department of Ecology to adopt comprehensive regulations to protect the public and the environment from the hazards inherent in the indiscriminate handling and disposal of dangerous wastes. Dangerous wastes include "extremely hazardous wastes" (EHW) and designated wastes of relatively lesser hazard identified as DW.

In chapter 173-303 WAC, Ecology has carried out its rulemaking authority under the statute, providing a system for identifying where dangerous wastes are produced and for keeping tabs on where they go thereafter. The idea is to insure handling and disposal which will minimize the risks posed by the generation of such wastes. The regulations have been described as a "cradle to grave" tracking system.

III

The statute provides Ecology with enforcement powers and authorizes both regulatory orders and civil penalties.

A regulatory order may be issued:

Whenever on the basis of any information the department determines that a person has violated or is about to violate any provision of this chapter

...
The order may specify corrective action and a period of time for compliance. RCW 70.105.095.

As to civil penalties:

Every person who fails to comply with any provision of this chapter or of the rules adapted thereunder shall be subject to a penalty in an amount of not more than ten thousand dollars per day for each violation. Each and every violation shall be a separate and distinct offense. In case of a continuing violation, every day's continuance shall be a separate and distinct violation . . .

In finally determining the amount of any penalty "the degree hazard associated with the violation" should be considered. i
70.105.080.

IV

The "cradle" end of the dangerous waste regulation spectrum is the generation of dangerous wastes. As a threshold matter it must be determined that such generation occurred.

The regulations approach this through the "designation" process. Primary reliance is placed on self-designation. Everyone who thinks his activities may be producing dangerous wastes should go through a detailed process for determining whether the wastes must be classified. WAC 173-303-070.

There are a variety of available designation methods. Some dangerous wastes are simply listed in the regulations. E.g., WAC 173-303-9903, WAC 173-303-9904. Some are designated by virtue of dangerous characteristics, such as ignitability, corrosivity, reactivity and toxicity of chemical constituents. WAC 173-303-09. Some are designated on the basis of specific criteria of dangerousness in regard to bioassay toxicity, persistency .

carcinogenicity. WAC 173-100 through -103.

Certain types of waste are excluded from coverage by the dangerous waste regulations. WAC 173-303-071. There is also a procedure for exempting wastes from coverage on a case-by-case basis. WAC 173-303-072.

On the record before us we conclude that there was ample reason for Comet to subject its paint and solvent wastes to the designation procedure. Ecology's investigatory work, in effect, performed that function for the company.

V

We conclude that the paint and solvent samples taken by Ecology on both April 1 and April 8 demonstrate that Comet at the time was generator of dangerous wastes.

The paint scrapings contained lead in excess of 5 mg/l which is above the threshold for designation as DW because of EP (extractable procedure) toxicity. WAC 173-303-090(8)(c).

The solvent xylene is a listed dangerous waste under WAC 173-303-9904. The xylene samples taken also exceeded the ignitability standards of WAC 173-303-090(5)(1).

The amounts of paint waste produced monthly and the amounts dumped on April 8 were in excess of the applicable 400 pound quantity exclusion limit. WAC 173-303-090(4). Under these circumstances, the solvent waste was fully subject to requirements of the dangerous waste regulation, regardless of amount. WAC 173-303-070(8).

VI

The regulatory order (DE 85-550) in the instant case is addressed solely to asserted violations on April 8, 1985. Four distinct regulatory provisions are cited as having been violated.

We conclude that, as a generator of dangerous wastes, Comet violated each of the cited sections on the date specified:

(a) WAC 173-303-060 requires any person who generates and transports a dangerous waste to possess a current dangerous waste identification number. Every person required to have such a number must notify Ecology of his dangerous waste activities. Comet did not provide such notice, nor obtain such a number until after the order in question was issued. Ecology obtained notice of Comet's activities through its own investigations.

(b) WAC 173-303-070 introduces the procedures, discussed in Conclusion IV above, for designation of wastes. This section requires that such procedures be followed by "any person who generates a solid waste not exempted or excluded by this chapter." Comet did not engage in this process prior to April 8, 1985, and, indeed, has not done so to this day.

(c) WAC 173-303-141 forbids the disposal of designated dangerous waste to a facility other than a permitted TSD facility. Comet caused dangerous wastes to be disposed at an unapproved facility.

(d) WAC 173-303-180 requires the preparation of a detailed manifest describing the shipment before transporting dangerous waste or offering it for transport. This also was not done.

duration of the offense, the type of requirement violated and the consequences of the violation.

Here the violations asserted occurred on one day. They were instantaneous violations, rather than "continuing" violations such might be committed by exceeding emission limitations for days on end. See Weyerhaeuser v. Department of Ecology, PCHB No. 1035 (August 1977).

The requirements violated, however, are the very heart of the dangerous waste regulation scheme. Comet's approach to the designation of its wastes can only be described as recalcitrant. From the failure to designate the rest of the violations flowed. The end result was that the system failed in its preventive function and dangerous wastes ended up being disposed of the wrong place.

Comet emphasizes the absence of adverse consequences from the illegal dumping, and notes that Ecology allowed the wastes to be left at the landfill after deciding that they posed no public health threat there. We acknowledge that the event of April 8, 1985, by itself, may pose no significant danger to people or to the environment. But we are also aware that it is the cumulative effect of many such innocuous-seeming individual events which the law and regulations seek to control.

XII

The prior behavior of the violator here involves no other regulatory orders or penalties. The sequence of contacts leading up to the events of April 8, 1985, mark the first time this company has

come under Ecology's regulatory scrutiny.

Although four distinct violations were found, they were all demonstrated by an occurrence on a single day. All of the evidence about the move from Spokane and the pre-April 8 inspections and phone calls was calculated, presumably, to show that a substantial penalty is justified.

However, under the circumstances, we do not think Comet can be viewed as a repeat offender. The company can more accurately be described as a slow learner. Although there is a likelihood that prior violations as to waste paint and solvent rags occurred before April 8, the silence of the landfills' records and the fact that all such violations went undetected leads us to conclude that, if they occurred, the quantities involved were minor--certainly nothing on the order of 75 or more barrels which Ecology insists are unaccounted for.

We are convinced that Comet's initial reluctance to become knowledgeable about the dangerous waste program led to the violation at bar. We are unconvinced that their prior behavior masked a significant or substantial pattern of violation prior to April 8.

XIII

Since the violation, the company has taken several steps to cure the ultimate problem of the improper disposal of dangerous wastes and appears to have made considerable progress in this regard.

Comet has not, however, fully complied with Ecology's regulatory order. Moreover, until the company has conscientiously followed through on the designation process, it cannot be known whether the

VII

There is no challenge to the specific corrective actions required by the regulatory order. Therefore, since we have concluded that the violations which were the basis for the order did occur, we hold that the order was appropriate and lawful under RCW 70.105.095.

VIII

We likewise hold that the assessment of a civil penalty (RCW 85-551) for the same violations on the same date was appropriate and lawful under RCW 70.105.080. This, then, leaves only the question of the amount of the penalty.

IX

Ecology argues that this Board has no power to alter the amount of the penalty except in cases where the agency can be found to have abused its discretion. We do not agree that we are so limited in the de novo proceedings which we conduct. See Protan Laboratories v. Department of Ecology, PCHB 86-206 (June 24, 1986). Accordingly, we review the penalty for reasonableness upon the record made before us at hearing.

X

Appellant attempted to introduce evidence which would show recommendations and internal discussions within the agency as to the amount of the penalty. This was objected to and we sustained the objection. Appellant placed the proffered evidence on the transcript by way of an offer of proof.

We rejected this evidence at hearing and did not consider it.

reaching our decision. We believe this type of information is shielded by the "deliberative process" privilege. See Hafnermenl University of Washington, 29 Wn.App. 366, 628 P.2d 846 (1981).

XI

Under the civil penalty provision of the statute, violations are charged and fines assessed on a strict liability basis. Therefore, it is irrelevant that Comet's management may have been ignorant that what occurred on April 8 was wrong. In any event, we conclude that they brought the consequences on themselves by failing to acquire the knowledge they should have had. And, as noted, we do not think a case of reasonable detrimental reliance on agency misinformation has been made out.

XII

We are mindful that the penalties imposed are civil in nature and that their purpose is not primarily to exact retribution but to change the behavior of the perpetrators and deter violations generally. See Cosden Oil Company v. Department of Ecology, PCHB 85-111 (December 1985). The factors we consider include:

- (a) The nature of the violation;
- (b) The prior behavior of the violator;
- (c) Actions taken after the violation to solve the problem.

Jensen's Kent Prairie Dairy v. Department of Ecology, PCHB 84-2 (November 6, 1984).

XI

The nature of the violation encompasses such matters as to

have succeeded in escaping the reach of the dangerous waste regulations. At the least, a need for spill prevention and control measures may be indicated.

XIV

The regulatory efforts of Ecology in this case have set Comet on the proper path. No further illegal disposal events are known or suspected. The intended consciousness-raising has occurred.

Under the full array of facts and circumstances a \$10,000 fine appears to us excessive. The breadth of villainy suspected by Ecology was not proven. No immediate serious adverse consequences resulted. Nonetheless, we regard the violations as a serious flouting of the dangerous waste regulations which should be strongly discouraged in either Comet or in others. To that end, we believe a penalty of \$4,000 would be reasonable and justified in this case.

XV

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

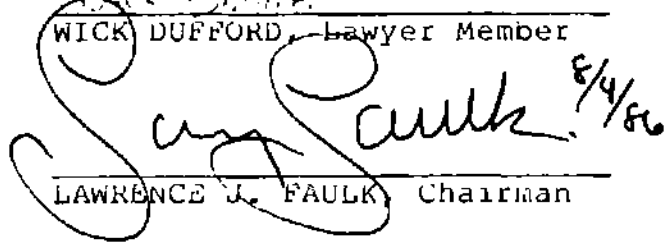
ORDER

The regulatory order (DE 85-550) is affirmed. The \$10,000 civil penalty assessed by Ecology against Comet is hereby abated to \$4,000 and, as such, is affirmed.

DONE at Lacey, Washington this 4th day of August, 1986.

POLLUTION CONTROL HEARINGS BOARD


WICK DUFFORD, Lawyer Member

 8/4/86
LAWRENCE J. FAULK, Chairman